IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR.

<<>>

:: **JUDGMENT** ::

1.United India Insurance Company Limited Vs. Smt. Kaushalya & Ors.

S.B. CIVIL MISC. APPEAL NO.464/1996.

2. Smt. Kaushalya Vs. United India Insurance Company Ltd. & Ors.

S.B. CIVIL CROSS-OBJECTION NO.19/2004.

Against the award dated 22.11.1995 made by the Motor Accidents Claims Tribunal Barmer in Claim Case No.58/1993.

Date of Judgment :: 9th May 2007

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Sanjeev Johari, for the appellant (insurance company).
Mr. Rajesh Panwar, for the respondent No.1 (claimant).

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BY THE COURT:

The appellant United India Insurance Company Limited has preferred this appeal against the award dated 22.11.1995 made by the Motor Accidents Claims Tribunal, Barmer in Claim Case No.58/1993 whereby the Tribunal has awarded compensation in the sum of Rs.46,071/- together with interest @ 12% per annum from the date of filing of claim application to

the claimant-respondent No.1 for the loss suffered by her due to the injuries sustained in a vehicular accident. The insurance company has challenged the award in question essentially in respect of the finding on its liability with the contention that on the date and at the time of accident, the offending vehicle was not insured with it. On the other hand, the claimant-respondent No.1 has filed cross-objections seeking enhancement over the amount of compensation awarded by the Tribunal.

Briefly put, the background facts are that the claimant-respondent No.1 made the claim application aforesaid on 12.07.1993 stating her age at 43 years and her earnings at about Rs.1,500/- per month while looking after the household and working on tailoring and cutting of cloths and so also grinding of spices. Narrating the incident, the claimant averred that on 21.01.1993 at 11:30 a.m. in front of the Government Hospital, Barmer, while returning home after fetching medicines for her ailing son, she was hit by an oncoming truck bearing registration No. RJ04 G 0176 driven by the non-applicant No.1 Dalpat Singh; that she sustained several bodily injuries on her left arm, right leg and other limbs; that her left arm was crushed beneath the wheels of offending vehicle; that she was admitted to the hospital and in order to save her life, her left arm was required to be amputated. The claimant asserted the liability of the non-applicants respectively as the driver, owner, and insurer

of the offending vehicle; and claimed compensation in the sum of Rs.5,53,700/- towards loss of earning capacity, transportation, treatment, special diets, and towards non-pecuniary loss for pain and sufferings and loss of amenities of life.

The non-applicants Nos. 1 and 2, driver and owner of the vehicle involved in accident, submitted that at the relevant time the vehicle in question was insured with the non-applicant No.3, i.e., the appellant United India Insurance Co. Ltd; but denied the occurrence and submitted that the non-applicant No.1 never caused any accident by rash and negligent driving. The non-applicant No.3, the appellant insurance company, while stating general denial of claim averments, asserted that on the date of accident, i.e., 21.01.1993, the insurance coverage was not effective and that the vehicle was insured with it from 22.01.1993 to 21.01.1994. The insurance company took various other objections in relation to its liability; but the same are not relevant for the questions involved in this appeal.

The Tribunal framed the following issues for determination of the questions involved in this case:-

> "1. क्या दिनांक 21.1.93 को अप्रार्थी सं0 1 ने दिन के करीब 11.30 बजे बाड़मेर में अस्पताल के सामने ट्रक नं0 आर जे-04/जी 0176 को तेजगति व लापरवाही से चलाकर प्रार्थिनी के टक्कर मारी जिससे उसके शरीर पर चोटें आयी ?
>
> (प्रार्थिनी)

2. क्या प्रार्थिनी क्षतिपूर्ति के रूप में 553700/- रूपये प्राप्त करने की अधिकारिणी है । यदि हां तो कितनी राशि तथा किस अप्रार्थी से ?
(प्रार्थिनी)

3. क्या दुर्घटना के समय तथाकथित वाहन अप्रार्थी सं0 3 के वहां बीमित नहीं था इसलिये अप्रार्थी सं0 3 का क्षतिपूर्ति अदा करने का उत्तरदायित्व नहीं है ?
(अप्रार्थी सं03)

4. क्या दुर्घटना के समय अप्रार्थी सं0 3 के पास वाहन चलाने का वैध अनुज्ञा पत्र नहीं था ?
(अप्रार्थी सं03)

5. क्या तथाकथित दुर्घटना की सूचना अप्रार्थी सं02 व 1 द्वारा अप्रार्थी सं0 3 को नहीं दी जाकर बीमा पॉलिसी की शर्तों का उल्लंघन हुआ है इसलिये अप्रार्थी सं0 3 का क्षतिपूर्ति अदा करने का कोई उत्तरदायित्व नहीं है ?
(अप्रार्थी सं03)

6. क्या तथाकथित दुर्घटना स्वयं प्रार्थिनी की उपेक्षा व लापरवाही से घटित हुई, इसलिये अप्रार्थी सं0 3 का क्षतिपूर्ति अदा करने का उत्तरदायित्व नहीं है ?
(अप्रार्थी सं03)

7. अनुतोष ।"

In oral evidence, the claimant examined herself as AW-1 and produced two witnesses Lajpat and Udaram as AW-2 and AW-3. On the other hand, on behalf of the non-applicants, Dalpat Singh, the vehicle driver was examined as NAW-1 and Banshidhar, the insurance agent was examined as NAW-2. The parties also produced documentary evidence, relevant

whereof shall be referred hereafter.

After hearing the parties, the Tribunal held in issue No.1 that the accident occurred because of rash and negligent driving of the truck in question by the driver that caused several bodily injuries to the claimant and led to amputation of her left arm. The Tribunal rejected other objections raised by the insurance company as involved in issues Nos. 4, 5 and 6 for want of evidence.

The Tribunal proceeded to decide the questions relating to the quantum of compensation and liability thereto as involved in issues Nos. 2 and 3 together. The Tribunal observed that the claimant sustained several injuries including crushing of her left arm that was required to be amputated; and considered it proper to allow Rs.25,000/- to her towards permanent disablement. The Tribunal put an estimate on the earnings of the claimant at about Rs.40-50/- per day; and considered it reasonable to allow Rs.20,000/- towards loss of earning capacity. The Tribunal further allowed Rs.1,071/- towards treatment expenditure as per the bills and in this manner found the claimant entitled to compensation in the sum of Rs.46,071/-.

On the question of liability for making payment of the amount of compensation, the Tribunal considered the stand of the non-applicant insurance company that the insurance coverage was not effective on the date and at time of the

accident, i.e., at 11:30 a.m. on 21.01.1993; however, with reference to the insurance certificate Ex.A/1 found that though the insurance cover was stated to be effective from 22.01.1993 but the premium in relation thereto was paid on 21.01.1993 under receipt No.672038 and held the non-applicant No.3, insurance company liable for payment of the amount of compensation on the reason that the insurance coverage of risk would be effective from the date the premium was paid. The Tribunal, accordingly, awarded compensation to the claimant in the sum of Rs.46,071/- and allowed interest @ 12% per annum from the date of filing the claim application; and held the non-applicants jointly and severally liable.

Assailing the award aforesaid, it has been strenuously contended by the learned counsel appearing for the appellant insurer that it has been precisely proved in evidence adduced on behalf of the appellant that the insurance cover was commencing from '00' hours of twenty second day of January 1993 and this fact was stated in the certificate of insurance Ex.A/1 also and, therefore, the suggestion of making payment of premium on 21.01.1993 is of no effect. Learned counsel contended that the Tribunal has erred in mulcting liability upon the appellant in relation to the accident that occurred before the date and time of commencement of insurance coverage.

Per contra, learned counsel appearing for the claimant-respondent No.1 referred to the provisions of Section 64-VB of the Insurance Act, 1938 and also referred to a Division Bench decision of this Court in the case of National Insurance Company Vs. Smt. Kamlesh Rathore & Ors. : 2005 RAR 217 to submit that the coverage of risk commences from the moment the insurance premium is received by the insurance company; and submitted with reference to the testimony of the insurance agent, NAW-2 Banshidhar Sharma and the noting on the cover note (Ex.8) that the premium amount was in fact received at 11:00 a.m. on 21.01.1993. Learned counsel submitted that in view of the undeniable facts available on record, when the insurance premium had been received prior to the occurrence in question, the appellant insurance company is not correct in its suggestion that on the date and at the time of accident, the vehicle was not under its insurance coverage. Learned counsel further submitted that mere stating of a different date in the insurance certificate or cover note cannot operate over and above the statutory provisions that the coverage of risk commences from the time the premium is accepted.

Learned counsel for the claimant-respondent No.1 while arguing on cross-objections submitted that the Tribunal has been too restrictive in awarding compensation only in the sum

of Rs.46,071/- to the hapless claimant who was otherwise maintaining herself and her ailing son and who has lost her left arm due to the accident in question in the middle age of about 43 years. Learned counsel for the appellant insurer on the other hand submitted that in the overall facts and circumstances of the case, the award of compensation as made by the Tribunal cannot be said to be too low or insufficient so as to warrant interference by the appellate court.

Having heard learned counsel for the parties and having scanned through the entire record, this Court is clearly of opinion that the appeal submitted by the appellant insurance company is bereft of substance and deserves to be dismissed; and on the other hand, the award of compensation as made by the Tribunal being grossly inadequate, deserves suitable modification by upward revision.

The submission of appellant insurance company is that the coverage of risk in relation to the vehicle in question was effective only from 22.01.1993 and hence, the liability in relation to the incident that occurred on 21.01.1993 cannot be fastened upon it. The submission is not well founded and remains squarely contrary to the facts available on record and so also the law applicable to the case. It remains undenied and indisputable that on behalf of the insurance company, its authorised agent received the premium in relation to the

insurance in question at 11:00 a.m. on 21.01.1993. The agent NAW-2 Banshidhar Sharma candidly admits the fact thus:

> "प्रीमियम की राशि मुझे दि0 21.1.93 के प्रात: 11 बजे ही प्राप्त हो चुके थे । "

The fact that the insurance premium was received at 11:00 a.m. on 21.01.1993 is distinctly stated in the insurance cover note (Ex.8) also. It is also indisputable that the accident in question did occur at 11:30 a.m. on 21.01.1993. The time of occurrence is distinctly stated in the first information report (Ex.2) and so is stated unequivocally by all the witnesses examined on behalf of the claimant. Though the proximity of time of making payment of premium for the purpose of taking insurance coverage and that of the accident may give rise to a semblance of doubt and to the question if such insurance coverage was in fact taken before the occurrence; but in the context of this vehicular accident compensation case, such remote doubt cannot displace the facts otherwise clearly established on record. The fact that insurance premium was paid at 11:00 a.m. on 21.01.1993 is an admitted position even on behalf of the appellant insurance company; and the fact that accident occurred at 11:30 a.m. on the same date has not been put to contention. The authorised agent of insurance company, NAW-2 Banshidhar Sharma has stated in his cross-examination

by the driver and owner of the vehicle that Dalpat Singh, driver, had deposited the amount of premium at 11:00 a.m. and had obtained cover note at 11:05 a.m.; and that he (the witness) did receive information about the accident at 11:30 a.m.

It has been suggested on behalf of the appellant insurer that the driver of the vehicle asked for issuance of insurance coverage effective from 22.01.1993. The driver Dalpat Singh has denied such suggestion. The said authorised agent of insurance company, NAW-2 Banshidhar Sharma has deposed in his examination-in-chief that he had issued the insurance cover note for the period 22.01.1993 to 21.01.1994 at the request of the vehicle driver; and has reiterated such stand in his cross-examination by the vehicle driver and owner. However, he has come out with an entirely different version in his cross-examination by the claimant; and, while admitting that cover note Ex. 8 was issued at 11:00 a.m., has stated that coverage of risk ought to commence from the date and time of issuance of cover note but the company had issued instructions that risk ought to be covered from the next date and he was carrying out such instructions. NAW-2 Banshidhar says,-

> "वैसे तो कवर नोट काटने की तिथि व समय से ही जोखिम प्रारंभ हो जानी चाहिये, परन्तु कंपनी द्वारा दिये गये निर्देश के अनुसार जोखिम अगली तिथि से प्रारंभ होने को निर्देश दिया था । जिसकी पालना मैं कर रहा था ।"

In the face of such a stand on behalf of the appellant insurance company, it is difficult to return a finding that the person making payment of premium in cash for obtaining the insurance coverage on 21.01.1993 at 11:00 a.m. wanted it to be effective from the next day, i.e., 22.01.1993. Hence, the fact that the insurance certificate or cover note purportedly stated commencement of the insurance from 22.01.1993 is of no avail so far the case of the appellant insurer is concerned. On the contrary, on an overall view of the matter, particularly when the authorised insurance agent has admitted that at 11:30 a.m. he did receive information about the accident, the possibility of an attempt on their part to state the day next for the purpose of commencement of risk coverage cannot be ruled out. This Court has noticed another ambiguity in the documents produced by the non-applicants. Ex.A/2 is the proposal form for insurance and strangely, on this proposal form, the period of insurance has been stated, “from 22.1.93 to 21.3.94”. If the insurance coverage was for one year, the period of insurance coverage as stated in the said proposal form cannot be taken as correct. Be that as it may, the fact remains that the said proposal form itself carry the date of proposal as 21.01.1993; and there appears no plausible reason for which the proposer might be believed to have asked for postponing the coverage of

risk so as to commence from the next day only. In the overall facts and circumstances of the case, there appears no reason to take any other view of the matter except that for having already received the insurance premium in cash through its authorised agent at 11:00 a.m. on 21.01.1993, the appellant insurance company assumed the risk in relation to the vehicle in question from the time the premium was paid and received; and the risk in relation to the incident that occurred at 11:30 a.m. on 21.01.1993 is covered under the insurance policy in question. The provisions of Section 64-VB of the Insurance Act, 1938 envisage that in the case of risks for which premium can be ascertained in advance, the risk may be assumed not earlier than the date on which the premium has been paid in cash or by cheque to the insurer; and as an obvious corollary, unless on facts anything to the contrary is established by definite and cogent evidence, the risk stands assumed by the insurer from the date and time the premium is accepted, for the essentials of the contract of insurance being complete. In an overall view of the matter, this Court has no hesitation in finding that the vehicle in question carried insurance coverage at the time of accident; and the appellant insurance company remains liable to satisfy the award of compensation in this case. The appeal filed by the appellant insurance company, therefore, deserves to be dismissed.

So far quantification of compensation is concerned, the award as made by the Tribunal remains too restrictive. The fact situation of the present case makes it clear that the claimant-respondent No.1, a widowed lady, had somehow been managing both ends meet; was looking after the household and her ailing son; and in fact she met with the unfortunate accident while returning home with medicines for her son. This is also not in dispute that in the accident she suffered extensive injuries including crush injuries on her left arm that was required to be amputated from shoulder joint. In the overall circumstances of the case, the award in question particularly in relation to loss of earning capacity only at Rs.20,000/- does not appear adequate. This Court is of opinion that in the circumstances of the case where the claimant was managing herself and her ailing son; and is not shown having any other economic support base; and with reference to the period of incident, even if her earnings are taken at Rs.1,500/- per month, in view of the amputation of entire of the left arm, the loss of her earning capacity at about 40% cannot be denied. Hence, it appears reasonable to take her loss of earnings at Rs.600/- per month leading to a multiplicand of Rs.7,200/- per annum; and even when captalised with minimum multiplier of 13, her pecuniary loss stands at Rs.93,600/- and there appears no reason not to allow the claimant such an amount towards loss

of earnings. The Tribunal has allowed Rs.25,000/- towards permanent disablement and entire amount of treatment expenditure with reference to the bills produced. In the circumstances of the case, though no separate amount has been allowed on other counts like attendants, diets etc. however, this Court is of opinion that interest of justice shall be served if the claimant is awarded an amount of Rs. 93,600/- towards loss of earning capacity in place of the amount of Rs. 20,000/- awarded by the Tribunal. The claimant is, therefore, awarded total compensation in the sum of Rs. 1,19,671/- (93,600/- + 25,000 + 1,071) in place of the amount of Rs. 46,071/- as awarded by the Tribunal.

The claimant shall, therefore, be entitled for an amount of Rs.73,600/- over and above the amount awarded by the Tribunal. The Tribunal has allowed interest @ 12% per annum; but in view of the enhancement being made herein and looking to the period of litigation, it appears appropriate to allow interest @ 7.5% per annum on the enhanced amount from the date of filing of claim application.

In the result, the appeal filed by the appellant insurer is dismissed; the cross-objections taken by the claimant are partly allowed; the award made by the Tribunal is modified; and in place of amount of Rs.46,071/-, the claimant-respondent No.1 is awarded compensation in the sum of Rs.1,19,671/-. The

claimant shall, therefore, be entitled for a further amount of Rs.73,600/- over and above the amount awarded by the Tribunal and shall be entitled for interest @ 7.5% per annum on this enhanced amount from the date of filing of claim application. The appellant insurer shall deposit the remaining amount payable under the modified award within 30 days with the Tribunal. Upon deposit, the Tribunal shall issue necessary and appropriate orders for disbursement. In the circumstances of the case, the parties are left to bear their own costs.

(DINESH MAHESHWARI), J.

Mohan